

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2011-000415-001 DT

01/27/2012

HONORABLE DEAN M. FINK

CLERK OF THE COURT  
S. Brown  
Deputy

RANDY VIDEEN  
VON JONES

ANTHONY TSONTAKIS

v.

SUNBURST FARMS IRRIGATION DISTRICT  
(001)  
RICHARD MITTEN (001)

ROBERT S LYNCH

REMAND DESK CV-CCC

**UNDER ADVISEMENT RULING**

The Court took this matter under advisement following oral argument on December 5, 2011. Upon further consideration the Court finds as follows.

Public records are presumptively subject to disclosure unless covered by a statutory exception, *Griffis v. Pinal County*, 215 Ariz. 1, 4 (2007). Thus, it is the burden of the District and Mr. Mitten to present legal authority that any or all of the documents requested are not subject to disclosure. In addition, A.R.S. § 39-121.01(D)(1) requires that the custodian of records furnish copies of requested records “promptly.”

Request number 1 was denied because disclosure would allegedly violate “the privacy and confidentiality needs of those communicating with the District.” The District clarified this at oral argument to refer only to e-mail addresses. The Court fails to see how disclosure of an e-mail address would be more intrusive than disclosure of the person’s name and physical address; if anything, the opposite would seem to be true, carrying as it does the possibility, however slight, of violent retaliation impossible via the internet. At any rate, the legislature has spoken. A.R.S. § 39-123(A) states that the statute does not require release of the home address or telephone number of various law enforcement and judicial personnel. This necessarily means

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that the statute does require the release of such information pertaining to non-enumerated persons.

Requests numbers 2, 3, and 4 were all rejected for the same reason: that 26 U.S.C. § 6103 prohibits the disclosure of any information contained in IRS forms, whether that information is taken from an IRS form or not. It strikes the Court that the District's interpretation of this statute would completely eviscerate, not only the public records law, but the very principle of open government, by making all expenditures of public funds confidential provided only that the recipient of the funds is subject to federal income tax. (In fact, such an interpretation of § 6103(b)(2)(A) would also make the identity of the recipient confidential; the Court does not understand the District to make this extreme argument.) However, § 6103 applies only to an "officer or employee of the United States, [an] officer or employee of any State, any local law enforcement agency receiving information under subsection (i)(7)(A), any local child support enforcement agency, or any local agency administering a program listed in subsection (l)(7)(D) who has or had access to returns or return information under this section or section 6104(c), and [an]other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), paragraph (6), (10), (12), (16), (19), (20), or (21) of subsection (l), paragraph (2) or (4)(B) of subsection (m), or subsection (n)." It does not appear to the Court that the District fits within any of these, and the District provides no argument that it does. Thus, federal law does not provide a bar to disclosure of these requests.

Request number 5 seeks legal bills, and was rejected on the ground of attorney-client privilege. The Court does not know whether those bills in fact contain privileged matters or simply constitute a non-protected reckoning of hours worked and fees charged. Therefore, Defendants are to provide copies to Mr. Jones redacted only of privileged material, and any redacted material is to be recorded in a privilege log.

No ground for denial of request number 6 is provided other than that the District was waiting for advice from its counsel. The District now takes the position that, with the filing of the lawsuit, it is now excused from compliance. This is inconsistent with the statutory requirement of promptness.

Turning to the motion to dismiss the counterclaim, Defendants are quite wrong that A.R.S. § 12-1809(R) is not limited to acts that serve no legitimate purpose. It very clearly is so limited. *LaFaro v. Cahill*, 203 Ariz. 482, 488 ¶ 23 (App. 2002). It is also clear that the counterclaim seeks adverse action, an injunction against harassment, against Plaintiffs in part as retaliation for their providing information to the Ombudsman, in violation of A.R.S. § 41-1376.01(D); this is expressly identified at paragraph 11 of the counterclaim as one of their "resort[s] to harassment and intimidation" constituting cause for the injunction. The only allegations against Plaintiffs are that they have filed an inordinate number of public records

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requests for documents the District claims are exempt; that they have filed frivolous complaints with the Ombudsman and the Attorney General; that they maintain a web site that spreads inaccuracies and links to an “automatic request form generator” so that others can make public records requests; and that they filed this lawsuit. (That Mr. Videen has had injunctions sought and in at least one case granted against him – even if the requests were well-founded, which cannot be assumed given their ex parte nature – has no bearing on this case.) Assuming all of these allegations to be true, they do not constitute a basis for an injunction against harassment. As for the request for fees and costs under the private attorney general doctrine, the Court can only point out that the District is a government entity, and Mr. Mitten is named in his official capacity with the District. The doctrine requires that the public interest be privately enforced. *Arnold v. Arizona Dept. of Health Services*, 160 Ariz. 593, 609 (1989).

**IT IS ORDERED** Plaintiff’s Motion to Dismiss Counterclaim is granted.

**IT IS FURTHER ORDERED** within 30 days, Plaintiffs/Petitioners shall lodge a form of final judgment for the Court’s signature. By that same date, and to the extent appropriate, they shall also file any Statement of Taxable Costs and Application for Attorney’s Fees.